

REMARKS

Claims 33-34, 37-50, and 53-59 remain pending in the application. Applicants have amended claim 33 to incorporate the subject matter previously recited in now cancelled claims 35 and 36. Applicants have amended claim 49 to incorporate the subject matter previously recited in now cancelled claims 51 and 52. Claims 41, 42, 54, and 55 are amended to correct antecedent basis as a result of the amendments to claims 33 and 49. No new matter has been added by way of the amendments to the claims.

Summary of the Office Action

The Office Action rejects claims 33-35, 37, 39-43, 45, 49-51, 53-56, and 58 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,041,347 ("Harsham"). Claims 36, 44, 46, 47, 52, 57, and 59 are rejected under 35 U.S.C. § 103 as obvious over Harsham. Claims 38 and 48 are rejected under 35 U.S.C. § 103 as obvious over Harsham in view of U.S. Patent No. 6,163,536 ("Dunn").

Discussion of the Rejections under 35 U.S.C. §§ 102(e) and 103

Independent claims 33 and 49 are directed to a method and system for enforcing a policy on a network. As recited in claims 33 and 49, a user object is selected, which includes a set of attributes comprising a group to which the user belongs, a user name and password, and an override attribute. The user name and password are used to determine whether to grant or deny access to the overall network. The attributes (e.g. group to which the user belongs) are further used to identify a profile for the user, which profile includes an authorization parameter and a communication parameter. The authorization parameter is used to determine whether to allow access to individual network resources. The communication parameter (which is determined by the user's group) is used to configure the communication path, including setting quality of service (QOS).

The Office Action rejects claims 33 and 49 as anticipated by Harsham. However, as set forth in the preceding paragraph, claims 33 and 49 each recite a user object that includes *inter alia* a group to which the user belongs, a user name, password, and an override attribute. It is submitted that Harsham does not anticipate claims 33 and 49 because it fails to disclose any object that includes a user name, password, or an override attribute. *See, e.g., In re Bond*, 910 F.2d 831 (Fed. Cir. 1990) (to anticipate a claim, a reference must disclose each and every limitation).

Claims 33 and 49 further recite using the user name and password in the user object to determine whether to grant or deny access to the overall network. The Office Action asserts that Harsham discloses using a user name and password to determine whether to grant or deny access at col. 4, ll. 4-8. Applicants respectfully disagree. The portion of Harsham cited by the Office Action merely indicates that authentication may be used between network devices 26, 28. It does not explicitly disclose using a user name and password. Nor can it be argued that the disclosure of authentication inherently includes a user name and password because authentication does not necessarily employ a user name and password. *See, e.g. Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364 (Fed. Cir. 2002) (“Anticipation by inherent disclosure is appropriate only when the reference discloses prior art that must necessarily include the unstated limitation”) (emphasis in original). For example, authentication may be based on a digital certificate issued from a Certificate Authority. Indeed, in the context of Harsham, a user name and password would serve no purpose as the network devices 26, 28 appear to be gateways between two networks that are not associated with an individual user.

Additionally, claims 33 and 49 recite configuring the communication path, including setting quality of service (QOS) based upon the communication parameter, which parameter is in turn selected based upon a group to which the user belongs. Setting QOS based upon a group to which a user belongs is not disclosed, taught, or suggested by the references relied upon by the Office Action.

In its rejection of claim 36 (the subject matter of which is now recited in claims 33 and 49), the Office Action concedes that Harsham does not disclose setting QOS. However, according to the Office Action:

Examiner takes Official Notice that QOS parameter is well known in the art. One of ordinary skill in the art would have been motivated to employ QOS in order to define expected performance for data transport to enhance quality.

Even assuming, *arguendo*, that the forgoing statement correctly represents the knowledge of one skilled in the art at the time of Applicants' invention, it is insufficient to establish a *prima facie* case of obviousness. The issue is not whether one of skill in the art would be motivated to employ QOS. The issue is whether one of skill in the art would have been motivated to employ QOS in combination with the other limitations recited in the

claims. *See, e.g., In re Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000) (“particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the claimed manner.”) (emphasis added). This requires, among other things, setting QOS based upon a determined group to which the user belongs. The Office Action has not supplied any evidence, nor has it even alleged, any reason why a person skilled in the art would have been motivated to set QOS based on a determined group. *See, e.g., In re Lee*, 277 F.3d 1338, 1344-45 (Fed. Cir. 2002) (specific factual findings and some concrete evidence in the record is required to support an obviousness rejection); *see also*, M.P.E.P. § 2144.03. For this additional reason, claims 33 and 49 are patentable over Harsham.

Claims 33-34 and 37-48 depend from claim 33 and claims 50, and 53-59 depend from claim 49. These dependent claims recite additional features that, in combination with the features recited in their corresponding base claim, further distinguish over the prior art. However, these need not be discussed herein because claims 33-34, 37-48, 50 and 53-59 are patentable for at least the same reasons as independent claims 33 and 49. Nevertheless, Applicants specifically note the following.

Claim 38 recites determining a call-back number. Claim 38 further recites, based on its dependency from claim 37, determining at the gateway whether to grant or deny access to the network based upon the call-back number. The Office Action acknowledges that Harsham fails to disclose “communication link is a call-back number,” but asserts that such teaching is provided by Dunn. Applicants acknowledge that Dunn generally discloses using a call-back number to call a client. However, that is not what is claimed. The claims require using the call-back number to determine whether to grant access to the network, which feature is not disclosed, taught, or suggested by Dunn even when that reference is combined with Harsham. Nor has the Office Action provided any teaching or suggestion to modify the teachings of Harsham and Dunn to arrive at the invention recited in claim 38. For this addition reason claims 38 is patentable.

Claims 41 and 54 recite “replacing the authorization parameter with an override attribute.” The Office Action asserts that Harsham discloses replacing an authorization parameter with an override attribute at col. 6, ll. 2-19. Applicants respectfully disagree. The portion of Harsham cited by the Office Action provides that a configuration file 90 is used by network devices 26, 28 to define access permitted through the network. (Harsham, col. 6, ll. 2-19). That section further provides that the configuration file represents objects in the form

of a data structure, which is described in Harsham with further references to FIGs. 10A-10D. (*Id.*) The disclosure corresponding to FIGs. 10A-10D provides that the data structure is constructed from a list and that for “each entry in the list, all rules for the object are added to the rule list in step 344.” (*Id.*, col. 9, ll. 52-62) (emphasis added). Thus, Harsham does not disclose that override attributes are used in the configuration file, but rather that configuration is an amalgamation of all rules that may apply to an object. In other words, in Harsham, all rules apply and no rules are overridden. Accordingly, there is no override attribute as suggested by the Office Action. For this additional reason, claims 41 and 54 are patentable.

Claims 42 and 55 recite “replacing the communication parameter with an override attribute.” The Office Action asserts that Harsham discloses replacing communication parameters with an override attribute. Applicants respectfully disagree. For the same reasons discussed with respect to claims 41 and 54, Harsham does not disclose any override attributes and for this additional reason claims 42 and 55 are patentable.

With respect to claims 44, 46, 47, 57, and 59, it is again noted that Office Action takes Official Notice as to the features recited therein and purports to provide some benefit to using those features. Applicants respectfully submit that such Official Notice is inappropriate here. Patent Office guidelines as well as case law establish that Office Notice without documentary evidence is only permissible in “some circumstances” and “should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known ... so as to defy dispute.” *See, e.g.* M.P.E.P. § 2144.04; *In re Ahlert*, 424 F.2d 1088, 1091 (C.C.P.A. 1970). It is respectfully submitted that features such as QOS, encryption (claims 46, 47, 59), and setting bandwidth (claims 44, 57) do not fall within the types of facts for which Office Notice is appropriate. This is particularly true in view of the way such features are recited in combination with the other claim elements. As previously discussed herein, it is not sufficient to show that these features are individually known to establish *prima facie* obviousness. Rather, it must be shown that one skilled in the art would be motivated to use such features in the particular combination claimed.

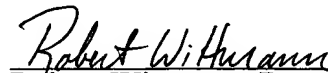
To the extent Office Notice is taken in a future Office Action, Applicants respectfully request an affidavit pursuant to 37 C.F.R. 1.04(d)(2). Applicants further note that “[w]hile ‘official notice’ may be relied upon, these circumstances should be rare when an application is under final rejection or action 37 CFR 113.” M.P.E.P. § 2144.03(A).

In re Appln. of Palekar et al.
Application No. 09/360,912

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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